

McArthur



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Brigham Young University

File: B-241887

Date: December 13, 1990

H. Hal Visick, Esq., for the protester.
Lester Edelman, Esq., and William Sapp, Esq., Department of the Army, for the agency.
C. Douglas McArthur, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against successful offeror's misuse of allegedly confidential data, filed more than 10 working days after oral notice of award from the agency, is untimely.

DECISION

Brigham Young University protests the award of a contract to Cooper/Roberts Architects AIA under request for proposals (RFP) No. DACW05-90-R-0072, issued by the Army Corps of Engineers for archaeological excavations at Little Dell Pony Express/Stage Station in Utah. The protester contends that Cooper had misled the protester into believing that it intended to submit a combined proposal with the protester, thereby gaining access to the protester's confidential data, which was used for the purpose of preparing Cooper's proposal.

We dismiss the protest.

The agency issued the solicitation on June 29 and received proposals on July 30, 1990. Award was made to Cooper on September 26. The protester admits that the agency provided Brigham Young with oral notification of the award to Cooper on October 1. On October 30, Brigham Young filed its protest of the award with our Office.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), require that a protest, other than a protest of an apparent solicitation impropriety, be filed within 10 working days after the basis of the protest is known or should have been

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known, whichever is earlier. A-Supply Line, Inc., B-230922, Apr. 8, 1988, 88-1 CPD ¶ 354. In this regard, a protester's receipt of oral information forming the basis of its protest is sufficient to start the 10-day time period running; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268. Brigham Young had oral notice of the award on October 1. Brigham Young's protest, filed nearly 4 weeks after it was aware of the basis for its protest, is therefore untimely.^{1/}

The protester argues that the awardee's misuse of its confidential information presents a significant issue, for which our Office should grant an exception to our timeliness rules. See 4 C.F.R. § 21.2(b). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.:-Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. In view of the fact that Brigham Young's protest is essentially a dispute between private parties, we find no reason to grant an exception in this case.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel

^{1/} The protest letter filed with our Office included as an exhibit a copy of a letter to the protester's attorney discussing the grounds of protest; the protester had obscured the date of the letter. The protester has declined our Office's request for the original copy of this letter or a time/date stamped copy of the written notification of award.